

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* HOKE V. BULLARD, DANIEL LANTZ  
and CHARLES QUINN

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Appeal 2007-4024  
Application 10/644,329  
Technology Center 3700

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Decided: November 30, 2007

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Before, TONI R. SCHEINER, DEMETRA J. MILLS, and  
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for anticipation. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Claim 10 is representative.

10. A feeding implement, comprising:

- a) a handle portion shaped to permit grasping by a user;
- b) a transport portion connected to said handle portion for dipping into solid food;

- c) a mouth guard connected in between said transport portion and said handle portion; and
- d) said transport portion having at least two substantially flat surfaces, each substantially flat surface having a plurality of grooves located thereon.

*Cited Reference*

Smith	US 5,711,759	Jan. 27, 1998
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DISCUSSION

*Background*

The claimed invention is directed to feeding implements designed for use by small children and individuals having disabilities. (Specification 1.)

*Anticipation*

Claims 10-15 stand rejected under 35 U.S.C. § 102(b) as anticipated by Smith. We select claim 10 as representative of the rejection before us since Appellants have not separately argued the claims. 37 C.F.R. § 41.37 (c)(1)(vii).

The standard under § 102 is one of strict identity. “Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim.” *Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). “Every element of the claimed invention must be literally present, arranged as in the claim.” *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

The Examiner contends that the implement of Figures 1-3 of Smith evidences all of the claimed structure. (Answer 3.)

Figures 1 and 3 of Smith are reproduced below.

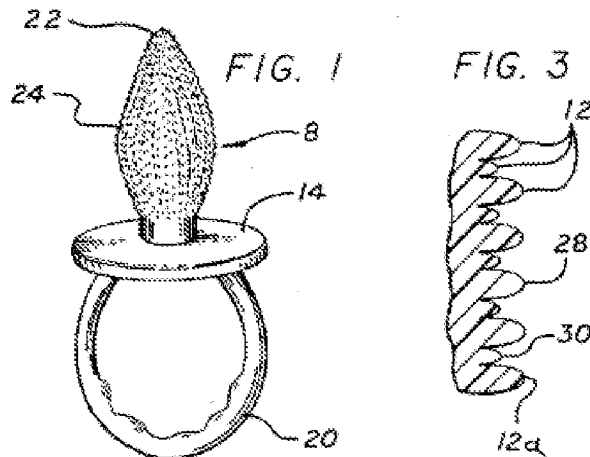


Figure 1 shows a perspective view of the oral hygiene device of Smith. Figure 3 is a cross-sectional view of a group of nodules of the oral hygiene device of Smith. Smith discloses at col. 4, ll. 9-13, that the head member 8 can be oval or rectangular in shape.

Figure 1 of Smith shows an oral device which meets the limitations of claim 10 in the following ways: a) a handle portion 20 shaped to permit grasping by a user; b) a head portion 8 connected to the handle portion, which serves as the “transport portion” for dipping into solid food of instant claim 10; and c) a mouth guard 14 connected in between the transport portion and the handle portion. Claim 10 also requires, in d), that the transport portion have at least two substantially flat surfaces, with “each substantially flat surface having a plurality of grooves located thereon.” Thus, claim 10 encompasses a transport portion with plurality of grooves located on top of the flat surface. The Examiner finds that there is nothing

that “prohibits the recessed area between the nodules 12 of Smith from being considered ... a plurality of grooves.” (Answer 3.)

According to Appellants’ Specification the term “substantially flat” in reference to the transport portion of the feeding implement refers to either a flat or slightly curved arc of less than or equal to 90°. (Specification 6.) We find that the surfaces surrounding and supporting (such as the “nodule support surface 10” shown in Fig. 2) the nodules of the hygiene device shown in Smith’s Figure 1 meets Appellant’s definition of “substantially flat.” Each side of the support surface can be considered to be “two substantially flat surfaces” as recited in claim 10. We further agree with the Examiner that the recessed areas between the nodules of Smith can be considered “a plurality of grooves” located on top of the substantially flat surface. Thus, we find that the Examiner has established a prima facie case of anticipation on the evidence before us.

Appellants contend that Figures 1-3 of Smith show head member 8 as a curved structure, presumably arguing that the head member of Smith is not a flat surface. (Br. 3.) As indicated herein, we find that we find that the support surface of the hygiene device of Smith’s Figures 1 and meets Appellant’s definition of “substantially flat.” Appellants further argue that Smith does not disclose “a plurality of grooves located upon a substantially flat surface of the head member (8).” (Br. 3.) Claim 10 requires that the plurality of grooves be located *on* the flat surface. Fig. 3 clearly shows grooves that are located on the substantially flat surface (e.g., 10 shown in Fig. 2) of Smith’s device as claimed.

The anticipation rejection is affirmed.

SUMMARY

The rejection of claims 10-15 under 35 U.S.C. § 102(b) as anticipated by Smith is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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